

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Verizon Communication Inc. ("Verizon") and MCI, Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI.

Application 05-04-020
(Filed April 21, 2005)

**ASSIGNED COMMISSIONER'S RULING EXTENDING
TIME FOR SERVICE OF INTERVENOR TESTIMONY**

A number of Intervenors seek an extension of time for service of their reply testimony and an increase in the number of hearing days proposed to resolve factual disputes, should such hearings be deemed necessary.¹ They argue that the requirement that such testimony be served on August 1, 2005, works a hardship on their ability to conduct discovery and to participate fully in this proceeding, particularly in view of the SBC/AT&T merger proceeding (A.05-02-027). The Intervenors request that the Commission affirm at this time that evidentiary hearings are necessary and that a full eight days of hearings should be scheduled now. The Intervenors charge that the schedule in this proceeding overlaps that of the SBC/ATT proceeding and that the current schedule would yield a decision "vulnerable to review." In addition, the

¹ Motion for Partial Reconsideration of Scoping Memo and Ruling of Assigned Commissioner, filed July 13, 2005, by the Office of Ratepayer Advocates, Telscape Communications, Qwest Communications Corporation, the Utility Reform Network, Level 3 Communications, LLC, Cox California Telcom, LLC, Pac-West Telecomm, Inc., and Covad Communications Company.

Intervenorors cite the recent release by MCI Inc. of approximately 700,000 pages of discovery material.

Verizon Communications, Inc., and MCI Inc. (collectively, Applicants) oppose an extension, arguing that this application was filed on April 21, 2005, and that Intervenorors have had ample opportunity to develop the testimony due on August 1. In particular, Applicants note that the Motion “submits no evidence that the Intervenor is unable to obtain information that would be relevant to the completion of testimony.”² In addition, Applicants further note that the Motion “submits no evidence that the schedule in the SBC/AT&T proceeding imposes any significant obligations on the Intervenorors during the month of July or at any time that would conflict with the schedule in this proceeding.”³

We find no merit to the Intervenorors claim that the schedule in this proceeding so conflicts with the SBC/AT&T proceeding as to deny Intervenorors the ability to develop a full record. As Applicants point out, the Motion submits no evidence that the schedule in the SBC/AT&T proceeding imposes any significant obligations on the intervenors during the month of July or at any other time that would conflict with the schedule in this proceeding.

The Intervenorors do not present such evidence because they cannot. The schedule for this proceeding was developed in light of the schedule already adopted in A.05-02-027 to avoid conflicts while ensuring that this proceeding is not simply “deferred” during the pendancy of the SBC/AT&T proceeding.

² Applicants’ Opposition to Intervenorors’ Motion, at 1.

³ Id.

Indeed, we believe that such a deferral is neither fair to the Applicants nor in the public interest.

Intervenors' claim that the current schedule will lead to a decision "vulnerable to review" is pure speculation that lacks merit. In preparing this procedural schedule in this proceeding, we reviewed the schedules of many similar proceedings, and developed a schedule consistent with precedents.

We take seriously the obligation to develop a full record. We note that many of the intervals in this proceeding and the SBC/AT&T merger proceeding, which Intervenors hold up as a model, are very similar. In particular, the time from filing the initial application to the submission of intervenor reply testimony was 16.5 weeks in the SBC/AT&T proceeding and 14.5 weeks in this proceeding; the time between submission of rebuttal testimony and the start of hearings, if hearings are held, is virtually identical (31 days vs. 30 days); and there are similar briefing schedules. Thus, there is no merit to the allegation that the current schedule is rushed or inconsistent with that in other proceedings.

We find Intervenors' request that we rule immediately that hearings are necessary to be premature. We note that the Scoping Memo rationally defers decision on this matter until testimony is in hand and affords parties an opportunity to file pleadings identifying specific disputes over issues of material fact in the testimony served. At the time of these motions, parties are free to renew their request for additional hearing days, but should do so based on issues identified.

Since we are considering whether hearings are necessary in this proceeding, we put parties on notice that they should attach sworn affidavits to all submitted testimony. In particular, parties should state their positions clearly

under oath. Parties should not anticipate that hearings or cross examination will be available.

While Applicants claim, and most Intervenors appear to agree, that discovery has progressed with commendable courtesy and efficiency, there is no question that delays have been encountered and mistakes have been made in the discovery process.⁴ Moreover, it was not until July 11, 2005, that Applicants filed their motion to prohibit employees of competitors from examining some 7,000 documents that Applicants have filed with the Federal Communications Commission. The Commission ruled on July 15, 2005, that in-house counsel and non-marketing employees could obtain such access under strict conditions. According to Intervenors, this means that some competitor companies will have only two weeks to review and analyze these documents and prepare testimony incorporating their findings.

We therefore find merit to the Intervenors's request for an extension of time to prepare testimony. Thus, for good cause shown, the date for service of Intervenors' testimony will be extended to August 15, 2005, Concurrent rebuttal testimony shall be served on September 12, 2005. Motions, if any, on the need for hearings are due on September 14, 2005. Replies to motions on the need for hearings are due on September 16, 2005. We anticipated issuing an Assigned Commissioner ruling on applicable law, need for and scope of hearings on September 19, 2005. If no hearings are deemed necessary, there are no further changes to the schedule.

⁴ See, e.g., Applicants' Opposition to Intervenors' Motion, at 13 (incorrect iteration of synergy spreadsheet and resulting delay).

If hearings are deemed necessary, further schedule changes are needed. Evidentiary hearings will take place September 26-28, 2005. Opening briefs will be due on October 10, 2005, and reply briefs on October 17, 2005. A proposed decision will still issue on October 31.

Accordingly, the revised schedules below are adopted for the service of testimony, evidentiary hearings, briefs, and related matters required to decide this application. The Applicants' opening testimony will be the testimony already filed as exhibits to the application. Two alternate procedural schedules are set forth below. The first schedule assumes no evidentiary hearings will be held. The second schedule assumes evidentiary hearings will be held.

Schedule I (No evidentiary hearings)

Intervenors serve reply testimony	August 15, 2005
Concurrent rebuttal testimony	September 12, 2005
Motions, if any, on the need for hearings	September 14, 2005
Replies to motions on need for hearings	September 16, 2005
Assigned Commissioner ruling on applicable law, need for and scope of hearings	September 19, 2005
Opening briefs	September 26, 2005
Reply briefs	October 3 , 2005
Proposed decision	October 19, 2005
Final Commission decision	November 18, 2005

Schedule II (With Evidentiary Hearings)

Intervenors serve reply testimony	August 15, 2005
Concurrent rebuttal testimony	September 12, 2005
Motions, if any, on the need for hearings	September 14, 2005
Replies to motions on need for hearings	September 16, 2005
Assigned Commissioner ruling on applicable law, need for and scope of hearings	September 19, 2005
Evidentiary hearings	September 26-28, 2005
Opening briefs	October 10, 2005
Reply briefs	October 17, 2005
Proposed decision	October 31, 2005
Commission decision	December 1, 2005

For the convenience of the parties, a second prehearing conference, if one is ordered, may be scheduled as a telephone conference call. Otherwise, it will be conducted in the Commission hearing room, State Office Building, 505 Van Ness Avenue, San Francisco.

IT IS RULED that:

1. The Motion for Partial Reconsideration of Scoping Memo and Ruling of Assigned Commissioner is granted in part to the extent set forth in this Assigned Commissioner's Ruling.

2. Applicants and intervenors filing testimony shall attach sworn affidavits to all testimony.

3. Parties should not anticipate that hearings or cross examination will be available.

Dated July 26, 2005 in San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Assigned Commissioner's Ruling Extending Time for Service of Intervenor Testimony by using the following service:

☒ E-Mail Service: sending the entire document as an attachment to all known parties of record that have provided electronic mail addresses.

☒ U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Dated July 26, 2005, at San Francisco, California.

/s/ VANA F. WHITE

Vana F. White

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.